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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ANTON JOSEPH KRYKA and DAVID ANDREW LAPORTE

Appeal 2008-003653
Application 10/714,121
Technology Center 2100

Decided: September 23, 2009

Before JOSEPH L. DIXON, HOWARD B. BLANKENSHIP, and
JEAN R. HOMERE, *Administrative Patent Judges*.

DIXON, *Administrative Patent Judge*.

DECISION ON APPEAL

I. STATEMENT OF THE CASE

A Patent Examiner rejected claims 2-49. The Appellants appeal therefrom under 35 U.S.C. § 134(a) (2006). We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

A. INVENTION

The invention at issue on appeal relates to “an improved index file for an image file, wherein the image file stores a plurality of captured document images for subsequent retrieval on an individual basis, and wherein the indexing file structure is self-describing, the indexing file having elements that describe indexing data for the captured document images.” (Spec. 8-9.)

B. ILLUSTRATIVE CLAIM

Claim 49 which further illustrates the invention, follows.

49. A document processing system having at least one computer running software that interfaces with transport hardware to provide document control and capture document images and document data in various formats, wherein an image file stores a plurality of captured document images for subsequent retrieval on an individual basis, the system including a computer readable storage medium storing the system software, the system software on the medium further comprising:

instructions for indexing the image file by creating an index file containing indexing data for the captured document images;

a document-type definition file including a plurality of elements; and

wherein the index file is in the form of a self-describing document in accordance with the document-type definition file, the self-describing document including indexing data for the captured document images to allow subsequent retrieval of the captured document images on an individual basis.

C. REFERENCES

The Examiner relied on the following references as evidence:

Anderson	US 2004/0015566 A1	Jan. 22, 2004
Lal	US 6,684,204 B1	Jan. 27, 2004

D. REJECTIONS

Claim 49 stands provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 4 of co-pending patent Application No. 10/714,122. Although the conflicting claims are not identical, they are not patentably distinct from each other for the following reasons:

Claim 4 of Patent Application No. 10/714,122 contain(s) every element of claims 49 of the instant application and thus anticipate the claim(s) of the instant application. Claims of the instant application therefore are not patentably distinct from the earlier patent claims and as such are unpatentable over obvious-type double patenting. A later patent/application claim is not patentably distinct from an earlier claim if the later claim is anticipated by the earlier claim.

(Ans. 4.)

Claims 2-49 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Anderson and Lal.

II. ISSUE

Have the Appellants shown error in the Examiner's initial showing of obvious-type double patenting?

Have the Appellants shown error in the Examiner's initial showing of obviousness in the combination of Anderson and Lal? Specifically, have the Appellants shown that Anderson does not teach or would not have suggested to one of ordinary skill in the art capturing a plurality of images for later retrieval on an individual basis using an index in a self-describing document?

III. PRINCIPLES OF LAW

35 U.S.C. § 103(a)

Section 103 forbids issuance of a patent when “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.”

KSR Int'l Co. v. Teleflex Inc., 550 U.S. 398, 406 (2007) (hereinafter “*KSR*”).

In *KSR*, the Supreme Court emphasizes “the need for caution in granting a patent based on the combination of elements found in the prior art”, *id.* at 415, and discussed circumstances in which a patent might be determined to be obvious. *Id.* at 415-16 (citing *Graham v. John Deere Co.*, 383 U.S. 1, 12 (1966)). The Court reaffirmed principles based on its precedent that “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *Id.* at 416. The operative question in this "functional approach" is

thus “whether the improvement is more than the predictable use of prior art elements according to their established functions.” *Id.* at 417.

The Federal Circuit recently recognized that “[a]n obviousness determination is not the result of a rigid formula disassociated from the consideration of the facts of a case. Indeed, the common sense of those skilled in the art demonstrates why some combinations would have been obvious where others would not.” *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1161 (Fed. Cir. 2007) (citing *KSR*, 550 U.S. at 416). The Federal Circuit relied in part on the fact that Leapfrog had presented no evidence that the inclusion of a reader in the combined device was “uniquely challenging or difficult for one of ordinary skill in the art” or “represented an unobvious step over the prior art.” *Id.* at 1162 (citing *KSR*, 550 U.S. at 418).

One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

IV. ANALYSIS

OBVIOUS-TYPE DOUBLE PATENTING

The Appellants note the provisional rejection and “will consider filing an appropriate terminal disclaimer in the event that the conflicting claim is patented.” (App. Br. 4). We therefore pro forma affirm the obvious-type double patenting rejection of independent claim 49 which has not been specifically argued.

35 U.S.C. § 103(a)

From our review of the Appellants' arguments in the Appeal Brief, Appellants' contentions set forth their view of what the prior art "appears" to teach rather than on affirmative statements to specifically address the Examiner's position. (App. Br. 6-8; Reply Br 3). The Examiner further supports the stated rejection in the Answer to address the Appellants' concerns for the plural images to individual retrieval.

The Examiner maintains at page 6 of the Answer that:

[D]atabase and cycle are manipulated, such as deleting and migrating, by the file management, sections 308-320) for subsequent retrieval on an individual basis (i.e., capturing any object into any database on either a collective basis or an individual object basis (section 120) and searching the system indexes on the basis of an individual object attribute or combination of object attributes (section 130), wherein the object teaches an image

The Examiner identifies that an image database storing images and associated information obtained from each check in a database for manipulation by a file management for subsequent retrieval on an individual basis is taught and suggested by section/paragraph [0120] of Anderson. We agree with the Examiner that Anderson evidences this well-known use of image acquisition of individual images or image acquisition on a "collective basis." Clearly, Anderson foresees that the image data would be retrievable from the database for later usage and/or manipulation as discussed by the Examiner respect to independent claim 49. (Ans. 6.)

In the responsive arguments at pages 13-14 of the Answer, the Examiner maintains that Anderson teaches an index file for the captured

items index in paragraph [0131]. The Examiner further maintains that Anderson teaches the database indexed in paragraph [0787] and [0788] for indexing and teaches an image file that stores a plurality of captured document images. Additionally, the Examiner further emphasizes that paragraph [0120] of Anderson teaches that a file management system is used for a database of plural items for subsequent retrieval on an individual basis. The Examiner maintains that capturing an object into any database on either a collective basis or an individual object basis is taught in paragraph [0120] and searching the system indices on the basis of an individual object attribute or combination of object attributes is taught in paragraph [0130]. Anderson further teaches that an object may be image in Table 1A and teaches an index is for query and retrieval in paragraph [0131]. (Ans. 13-14.)

In response to the Examiner's further clarification of the teachings of Anderson regarding paragraphs [0131] and [0120], the Appellants merely state at page 2 of the Reply Brief that "[s]ection 131 mentions a captured items Index. There does not appear to be any discussion of an index file indexing and image file the stores a plurality of captured document images for subsequent retrieval on an individual basis as claimed," and "[s]ection 120 describes a front-end routine for routing different objects to different database. Again, Andersons still has shortcomings," but the Appellants do not identify what the shortcomings are.

We find the Appellants' mere restatement of the claim language is not a specific argument for patentability to distinguish the claimed invention and further does not show error in the Examiner's line of reasoning as set forth in page 11 of the Answer.

Clearly, Anderson teaches an image file stores a plurality of images and the Examiner relied upon portions in the paragraphs [0120] and [0131] to teach or suggest either an individual capture or collective capture basis and subsequent routing individual objects to different databases based upon accompanying index data.

Hence, to capture and then subsequently route individual objects, Anderson would have needed to process and index the data in a manner to carry out the recited function.

The Appellants argue that Anderson has additional shortcomings in addition to the shortcomings acknowledged by the Examiner. The Appellants argue that “ [i]t appears that Anderson fails to describe an index file indexing and image file that stores a plurality of captured document images for subsequent retrieval on an individual basis, let alone describe an index file in the form of a self describing document. This additional shortcoming of Anderson is also not overcome by Lal.” (App. Br. 5.) The Appellants’ argument is not commensurate in scope with the express language of independent claim 49 wherein an “index file” is not claimed as performing the “indexing.” (App. Br. 5-6.) The Appellants further argue that “Anderson does not appear to describe an index file for an image file that stores captured document images for subsequent retrieval on an individual basis, let alone describe an index file in the form of a self-describing document.” (App. Br. 7).

Again, the Appellants reiterate claim language which sets forth a desired outcome of a system with no structure or claimed process to achieve the desired functional end result. Appellants’ assertion that the reference appears not to teach the cited limitation does not show error in the

Examiner's proffered showing of obviousness. Therefore, the Appellants' argument is not persuasive of error.

With respect to the teachings of Lal, the Appellants argue the totality of the claim language while the Examiner has relied upon Lal for a limited teaching concerning the self-describing document. (App. Br. 7-8). The Appellants argue that Lal is about indexing an XML document collection and conducting a search on a network which includes documents having a plurality of tags. (*Id.* at 8.) The Appellants argue that “there is clearly no suggestion of an index file in the form of a self-describing document.” (*Id.*) The Appellants identify no specific interpretation for “self-describing document” in the art or in the Appellants' Specification to show error in the Examiner's reliance upon the teachings of Lal. The Appellants further argue that the hash table index and the tree index of Lal “are object or data structures containing pointers to elements in a document object model, are not documents, and are certainly not index files that index image files containing multiple document images, let alone an index files in the form of self-describing documents.” (App. Br. 8.)

Again, the Appellants' argument goes beyond those specific teachings the Examiner has relied upon in Lal. The Examiner relies upon the teachings of Lal teach and suggest to the use of documents with XML tags and document type definitions (DTDs) (Lal, fig. 5 and Cols. 2, 4 and 5; Ans. 14-17.) The Examiner maintains that the XML tags in Lal are self-describing. We agree with the Examiner's rationale and find no express limitations in the language of independent claim 49 which persuades us otherwise, and the Appellants have identified no special interpretations in light of the Appellants' Specification with which to interpret the language of

claim 49. Therefore, Appellants' argument is not persuasive of the error in the Examiner's initial showing of obviousness.

The Appellants argue that the hash table index as shown in figure 8 of Lal is a flat index of pointers to elements in the document object model (App. Br. 8; Reply Br. 4.) While the hash table index does contain the names of tags that occur in the XML documents; the hash table is only a table of names and pointers and is not a "document" let alone the fact the claim specifically require a "self-describing document." (*Id.*) Again, the Appellants' claim 49 does not set forth any express limitations of the "document", nor have the Appellants identified any express definition in the Specification with which to interpret the claim language to show error in the Examiner's interpretation and application of the prior teachings. Therefore, Appellants have not shown error in the Examiner's initial showing of obviousness.

The Appellants argue that the hash table index in the tree index are "not documents, and are certainly not index files that index image files containing multiple document images and that are in the form of self-describing documents." (App. Br. 9; Reply Br. 4.) Again, the Appellants' argument does not distinguish why the hash table index or tree index may not be considered a "document", nor does it address any specific interpretation of the claim language to show error in the Examiner's interpretation.

With respect to the Examiner's motivation for the combination, the Appellants state that they believe that there is no motivation took upon the references to achieve the claimed invention (App. Br. 9; Reply Br. 5), but the Appellants' belief does not show error in the Examiner's statement for

the combination. Therefore, the Appellants' argument is unpersuasive of error in the Examiner's initial showing of obviousness of independent claim 49 and we will sustain the rejection thereof.

With respect to claims 2-48, the Appellants have set forth no separate arguments for patentability of claims 2-48. Therefore, we will group these claims with independent claim 49 and sustain the rejection thereof.

V. CONCLUSION

For the aforementioned reasons, the Appellants have set forth no argument with respect to the Examiner's obvious-type double patenting rejection and have not shown error therein. The Appellants have not shown error in the Examiner's initial showing of obviousness of independent claim 49, and have not shown that Anderson does not teach or would not have suggested to one of ordinary skill in the art capturing a plurality of images for later retrieval on an individual basis using an index in a self-describing document.

VI. ORDER

We affirm the obvious-type double patenting rejection of independent claim 49, and affirm the obviousness rejections of claims 2-49.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). See 37 C.F.R. § 1.136(a)(1)(iv)(2008).

AFFIRMED

Appeal 2008-003653
Application 10/714,121

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